

BEFORE THE FEDERAL ELECTION COMMISSION

COMMISSION
SECRETARIAT

MUR 5333

2005 NOV -1 P 2: 0

SENSITIVE

In the Matter of)

Robert B. Lichfield)

Lenae Lichfield)

Loni Lichfield O'Neil¹)

Lyndee Lichfield)

Patricia Lichfield)

Reagan Lichfield)

Robbie Lichfield)

Roger Lichfield)

Stephanie Lichfield)

Tavia Lichfield)

Robert Browning Lichfield Family Limited Partnership)

John Swallow for Congress and Stanley R. deWaal,)

in his official capacity as treasurer)

John Swallow)

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

1. Find reason to believe that Robert Browning Lichfield Family Limited Partnership violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f.
2. Find reason to believe that John Swallow violated 2 U.S.C. § 441a(f).
3. Find reason to believe that John Swallow for Congress and Stanley R. deWaal, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b)(3)(A)
4. Take no further action regarding the reason to believe findings that John Swallow for Congress and Stanley R. deWaal, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f;
- 5.
6. Take no further action regarding the reason to believe findings that Robert B. Lichfield knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3);

¹ This respondent was identified in the complaint and the First General Counsel's Report ("First GCR") as Loni Lichfield

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8. Dismiss the complaint with respect to the alleged excessive contributions by Lenae Lichfield, Loni Lichfield O'Neil, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield;

9. Take no further action regarding the reason to believe findings that Lenae Lichfield, Loni Lichfield O'Neil, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield each violated 2 U.S.C. § 441f;

10. Close the file as to Lenae Lichfield, Loni Lichfield O'Neil, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield;

11. Approve the attached Factual and Legal Analyses; and

12. Approve the appropriate letters

II. INTRODUCTION

In this matter, the Commission made various reason to believe findings stemming from the apparent contribution of \$30,000 from Robert B. Lichfield to congressional candidate John Swallow through ten \$3,000 "official checks" purchased by Mr. Lichfield from his bank and contributed in his name and those of nine of his family members. Our investigation has determined that the \$30,000 was not a contribution in the name of another by Mr. Lichfield from his personal funds. Instead, the funds for the contribution were derived from a family limited partnership. Although Mr. Lichfield claims the transaction was structured as a distribution to the partners followed by ten individual contributions, the money never passed through the hands of any partner other than Mr. Lichfield, who was the managing general partner. Consequently, the transaction resulted in an excessive contribution by the partnership. Moreover, because Mr. Lichfield maintains that the candidate, John Swallow, suggested the form of the transaction and accompanied Mr. Lichfield to the bank where he personally took possession of the checks, there

1 is reason to believe that the candidate personally, as well as his committee, knowingly accepted
2 the excessive partnership contribution.

3 **III. BACKGROUND**

4 The complaint in this matter alleged that ten individuals with the last name "Lichfield"
5 made excessive contributions to John Swallow for Congress ("Committee"), which disclosed the
6 receipt of \$3,000 from each Lichfield in January 2002. Mr. Swallow was a candidate in three
7 elections during 2002, and so the contributions on their face appeared to be within the limits of
8 2 U.S.C. § 441a(a)(1)(A). The complaint also alleged that eight of the Lichfields were children
9 in whose names contributions were made. See the First GCR at 10-11.

10 The Committee's response to the complaint included copies of ten \$3,000 "official
11 check[s]" (resembling money orders or cashier's checks), each identifying "Robert Browning
12 Lichfield" as "purchaser." Each of the checks contains similar handwriting naming a Lichfield
13 contributor, e.g., "from: Lori Lichfield." The Committee also provided a letter from its treasurer
14 addressed to Robert B. Lichfield dated March 15, 2002. After thanking Mr. Lichfield for the
15 contribution, the letter said:

16 The strict laws of the Federal Election Commission state that no one can make a
17 contribution on behalf of someone else. However, the check was drawn on only one
18 account. Please confirm to us in writing that the \$3,000 contribution was from your
19 personal funds.

20
21 The letter provides fields for each Lichfield's signature and date. The completed fields contain
22 the signatures of all ten Lichfields dated March 20, 2002. See the First GCR at 11.

23 The ten Lichfield respondents submitted identical responses to the complaint, each one
24 stating a belief that they had followed "the regulations of the FEC" in contributing \$1,000 for
25 each of the three elections involving John Swallow. The responses also stated that the Swallow
26 campaign assured them, before the contributions, "that this would be within the regulations of

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the FEC.” See the First GCR at 11-12. The responses contained no information regarding the ages of the Lichfield contributors.

It appeared from the official checks that Robert B. Lichfield paid for all \$30,000 of the Lichfield contributions. Aside from Mr. Lichfield's own contribution, there is no indication on the face of these instruments that the funds are in fact those of the named contributor. The only relation these official checks appear to have to the named contributors is the handwriting naming a Lichfield contributor, e.g., “from: Lori Lichfield.” Finally, that handwriting on all ten checks appears to be that of the same person. See the First GCR at 12.

On this basis, the Commission found reason to believe that:

- Robert B. Lichfield knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3) and 441f; and
- Lenae Lichfield, Lori Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield each violated 2 U.S.C. § 441f.

In addition, the Commission took no action at the reason to believe stage with respect to

- Lenae Lichfield, Lori Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield regarding the allegation that they violated 2 U.S.C. § 441a(a)(1)(A); and
- John Swallow for Congress and Stanley R. deWaal, as treasurer, in connection with the Lichfield contributions.

This Office conducted an informal investigation of the Lichfield contributions, the results of which are set forth below along with our recommendations for bringing this portion of MUR 5333 to a conclusion.²

² See General Counsel's Report #2 dated June 28, 2005 (“GCR #2”), which addressed the other remaining respondents in this matter WinterFox LLC and WinterHawk Enterprises LLC and the related individual respondents. In order to address the Committee's overall liability in one Report, we are including its receipt of contributions from both the LLCs and the Lichfields here, in General Counsel's Report #3.

1 Limited Partnership ("RBLFLP").⁴ Robert B. and Patricia Lichfield are the general partners of
2 the RBLFLP and their seven daughters and sons are the limited partners. Robert B. and Patricia
3 Lichfield each own 3.38% of the RBLFLP and each of the seven children owns 13.32%.
4 Stephanie and Tavia Lichfield, spouses of Robbie and Roger Lichfield, respectively, are not
5 partners of the RBLFLP.

6 According to the Lichfields, the RBLFLP funds used to purchase the contribution checks
7 constituted a "partnership distribution" to the partners. All ten Lichfield contributors have filed
8 sworn affidavits averring that they contributed \$3,000 of personal funds to the Committee and
9 that they received these personal funds through a distribution paid from the RBLFLP, a family
10 business. The Lichfields also aver that Robert B. Lichfield as general partner "made
11 arrangements for the funds to be distributed from the partnership account to be issued for each of
12 the partners and their spouses in the amount of \$3,000." Finally, the Lichfields aver that they
13 had not previously made any contributions to Federal candidates⁵ and that they relied upon the
14 representation of John Swallow and his staff "as to the amount and manner of making such
15 contributions."

16 Based on Robert B. Lichfield's affidavit and his interview with this Office, the
17 contributions appear to have taken place in the following manner. Mr. Lichfield first met the
18 candidate John Swallow at a local Republican Party breakfast in Washington County, Utah,

⁴ Robert B. Lichfield described the RBLFLP as at least twelve years old and actively involved in the purchasing and leasing of real estate, with several million dollars of real estate under management. The RBLFLP is registered in Utah as a domestic limited partnership; the Utah State Code does not specifically address family partnerships. See Utah Code Ann. Title 48 (Partnerships). Family partnerships are recognized in the Internal Revenue Code, which provides that a person shall be recognized as a partner if he or she owns a capital interest in a partnership in which capital is a material income-producing factor, whether or not such interest was derived by purchase or gift from any other person. See 26 U.S.C. § 704(e)(1). Often the interest is given by a parent to a child. See 33 Am. Jur. 2d *Federal Taxation* §§ 2025-2034 (Family Partnerships) (2005).

⁵ The public record does not indicate prior federal contributions, Robert B. Lichfield had made substantial donations to non-federal party committee accounts during 2001. See the First GCR at 14, fn 16.

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1 when Mr. Swallow was campaigning in that part of the state. Mr. Swallow was invited to Mr.
2 Lichfield's house, and within a day or two of the breakfast event went there, on January 19,
3 2002. Once there, according to Mr. Lichfield, Mr. Swallow solicited contributions from Mr.
4 Lichfield and other Lichfields present.⁶ Those Lichfields present agreed at that time to
5 contribute. Mr. Lichfield and Mr. Swallow discussed how to effect the contributions, where two
6 of the family members were minors and did not have checking accounts, and other family
7 members who might contribute were not present. Mr. Swallow suggested the form of RBLFLP
8 distributions to make the contributions.

9 According to Mr. Lichfield, Mr. Swallow was in a hurry, and asked Mr. Lichfield if they
10 could take care of the contributions that day. In fact, according to Mr. Lichfield, Mr. Swallow
11 asked Mr. Lichfield if he, John Swallow, could accompany Mr. Lichfield to the bank and take
12 possession of the contributions there. Messrs. Swallow and Lichfield then went to the bank. Mr.
13 Lichfield, acting as managing general partner, purchased with partnership funds the ten \$3,000
14 "official checks." Mr. Lichfield wrote on the bottom of each check the name of an individual
15 Lichfield to indicate the individual to whom the contribution was to be attributed and gave the
16 checks to Mr. Swallow while the two of them were still at the bank. However, Mr. Lichfield
17 says he told Mr. Swallow not to cash the checks until Mr. Lichfield had obtained the approval of
18 the RBLFLP partners not present at the solicitation and until Mr. Swallow had had his lawyers
19 review the arrangement.

20 About a week later, Mr. Lichfield says, he obtained the remaining partners' approval and
21 told Mr. Swallow, who informed Mr. Lichfield that his counsel had favorably reviewed the
22 arrangement. According to Mr. Lichfield, he thus felt reassured that the contributions were

⁶ Mr Lichfield did not recall which family members were present when Mr. Swallow solicited, but did note that the solicitation did not apply to Lana Patricia Lichfield, who was six years old at the time. According to Mr. Lichfield, Mr Swallow told the Lichfields that she was too young to understand the process and make an informed decision

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1 permissible and gave his assent to the deposit of the checks. The Committee then disclosed the
2 receipt of \$3,000 contributions from each of the ten Lichfields.

3 Despite the fact that no one other than Mr. Lichfield and Mr. Swallow ever actually
4 possessed the funds, Mr. Lichfield maintains that the ten partnership checks represented a \$3,000
5 distribution to each partner except six-year-old Lana Patricia Lichfield, who received no
6 distribution, and sons Robbie and Roger Lichfield, who received \$6,000 distributions so that
7 their spouses could each contribute \$3,000. He further asserts that these distributions
8 represented taxable income for each partner. In effect, he asserts that the partnership made no
9 contribution at all, and that each of the eight partners and the two non-partner spouses decided to
10 contribute their contributions individually to the Swallow campaign.

11 **B. The Lichfield Contributions are a Partnership Contribution**

12 Despite the Lichfields' assertions that their contributions constitute individual
13 contributions, for the reasons set out below, the Lichfield contributions are more appropriately
14 viewed as a \$30,000 contribution from the RBLFLP.

15 A partnership such as the RBLFLP is a "person" under the Act. 2 U.S.C. § 431(11).
16 Like any other "person" (except for prohibited sources such as corporations), a partnership is
17 limited in how much it can contribute. *See* 2 U.S.C. § 441a(a)(1). At the time of these
18 contributions, that limit was \$1,000 per election to any candidate and his authorized committee.
19 At the same time, partners in a partnership, unlike shareholders in a corporation, own the
20 partnership's funds. *See* 59A Am. Jur. 2d *Partnership* § 2 (2003). The partnership regulation at
21 11 C.F.R. § 110.1(e) balances the legal personality of a partnership and the partners' ownership
22 of partnership funds through dual attribution. Under dual attribution, partnership contributions
23 are attributed to both the partnership and to the partners. *See* 11 C.F.R. § 110.1(e). The

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1 attribution to the partners can be accomplished in either of two ways: 1) in direct proportion to
2 each partner's share of the partnership profits; or 2) in any other proportion by agreement of the
3 partners, as long as only the profits of the partners to whom the contribution is attributed are
4 reduced and these partners' profits are reduced in proportion to the contribution attributed to
5 each of them. 11 C.F.R. § 110.1(e)(1) and (2). If this dual attribution could be avoided by the
6 simple expedient of converting partnership funds to as many cashiers' checks as it takes to "max
7 out" the number of contributing partners, there would be nothing left of the dual attribution rules,
8 and nothing left of the Act's limitation on how much a partnership could contribute.

9 Nor do the partnership funds become individual contributions because Mr. Lichfield
10 obtained the approval of the various RBLFLP partners. As noted, some of these asserted
11 approvals came after Mr. Lichfield gave the checks to the candidate, i.e., after the contributions
12 were made. Approval of a partnership contribution by the partners *is* relevant – to the attribution
13 of partnership contributions under 11 C.F.R. § 110.1(e)(2), as discussed below. However, this
14 approval does not convert a partnership contribution into individual contributions. Further, the
15 fact that the partnership distribution consists of funds owned by the Lichfields does not turn the
16 distributions into individual contributions. As noted, all partnership funds are owned by the
17 partners. See 59A Am. Jur. 2d *Partnership* § 2 (2003). Neither does the "distribution's" status
18 as taxable income of the partners turn the distribution into individual contributions, since, under
19 the FECA, the form of the transaction at issue here was effectively identical to a partnership
20 contribution.⁷

⁷ A distribution need not pass through a partner's own account under tax law, which contemplates constructive or deemed distributions. See *US v Basye*, 410 U.S. 441, 447-48, 453-54 (1973), *White v Commissioner of Internal Revenue*, 991 F.2d 657, 661 (10th Cir. 1993).

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As a partnership contribution subject to the requirements of 11 C.F.R. § 110.1(e), we analyze the RBLFLP contribution below in section IV.B.1 as a contribution attributed to the partnership and in section IV.B.2 as a contribution attributed to the partners.

1. Contribution attributed to partnership

As a partnership contribution, the RBLFLP contribution is subject to the contribution limits. *See* 11 C.F.R. § 110.1(e) (a contribution by a partnership shall not exceed the Act's limitations on contributions). The limit on contributions to candidate committees in effect at the time of the RBLFLP contribution was \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). The RBLFLP \$30,000 contribution to the Committee in connection with the 2002 convention, primary and general elections, exceeded that limit by \$27,000. Thus, this Office recommends that the Commission find reason to believe that the Robert Browning Lichfield Family Limited Partnership violated 2 U.S.C. § 441a(a)(1)(A).

The Act also prohibits candidates and committees from knowingly accepting excessive contributions. 2 U.S.C. § 441a(f). John Swallow personally received the ten \$3,000 checks from Robert B. Lichfield. Mr. Swallow was aware of Mr. Lichfield's use of partnership funds; in fact, according to Mr. Lichfield, it was Mr. Swallow who suggested the use of the partnership distributions to make the contributions. Accordingly, this Office recommends that the Commission find reason to believe that John Swallow violated 2 U.S.C. § 441a(f). In addition, John Swallow for Congress and Stanley R. deWaal, in his official capacity as treasurer, are liable for the receipt of this excessive contribution, and so this Office recommends that the Commission find reason to believe that John Swallow for Congress and Stanley R. deWaal, in

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1 his official capacity as treasurer, violated 2 U.S.C. § 441a(f). The Committee and its treasurer
2 are also liable for failing to report the receipt of the contribution from the RBLFLP and instead
3 reporting the ten \$3,000 checks as individual contributions from the ten Lichfields, and so this
4 Office recommends that the Commission find reason to believe they violated 2 U.S.C.
5 § 434(b)(3)(A)

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8 **2. Contribution attributed to partners**

9 **a. Introduction**

10 The contribution limits applicable to the RBLFLP also apply to the individual partners to
11 whom the contribution is attributed. See 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(e). These
12 limits are enforced by requirements in the Commission's dual attribution regulations noted above
13 that partnership contributions are attributed to 1) each partner in direct proportion to his or her
14 share of the partnership profits, or 2) in a non pro rata fashion by agreement of the partners, as
15 long as only the profits of the partners to whom the contribution is attributed are reduced, and
16 these partners' profits are reduced in proportion to the contribution attributed to each of them.
17 11 C.F.R. § 110.1(e)(1) and (2). In order to apply these provisions, we first consider the status of
18 each Lichfield to see if they may serve as an attributed contributor at all.

19 **b. Status of Lichfields and impact on attribution under section**
20 **110.1(e)(1) and (2)**
21

22 Of the ten Lichfields identified as individual contributors, six – Robert B., Patricia, Lori,
23 Lyndee, Robbie and Roger – are RBLFLP partners and over 18 years of age. Two others,

⁸ The Commission previously took no action regarding the Committee's acceptance of the Lichfield contributions. See the Commission's Amended Certification dated July 6, 2004 at ¶ 10. This Office told the Commission that we would make substantive recommendations after investigating the contributor side of the transaction. See the First GCR at 15-16.

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Stephanie and Tavia Lichfield, are not partners but are spouses of partners Robbie and Roger Lichfield, respectively. The remaining two, Lenae and Reagan Lichfield, are RBLFLP partners under the age of 18. We turn here to the non-partners and the minors.

i. Non-partner spouses

As for the non-partner spouses, no portion of a partnership contribution may be attributed to a spouse of a partner unless the spouse is also a member of the partnership. *See* Advisory Opinion 1980-67. Accordingly, no portion of the RBLFLP contribution can be attributed to Stephanie or Tavia Lichfield.

As a result, the RBLFLP and the attributed partners made contributions in the names of these two non-partners. *See* 2 U.S.C. § 441f, First GCR at 23-24. This Office recommends that the Commission find reason to believe that the Robert Browning Lichfield Family Limited Partnership violated 2 U.S.C. § 441f.

⁹ *See* 2 U.S.C. § 441f; 11 C.F.R.

§ 110.4(b)(1)(iii). In light of Stephanie and Tavia Lichfield's own comparatively limited role in this activity, the uncertainty of whether or not they knowingly permitted their names to be used to effect the contributions and in order to focus this matter on the individuals and entities most responsible, this Office recommends that the Commission take no further action regarding the reason to believe findings that these two individuals violated 2 U.S.C. § 441f. As for the

⁹ As noted above, the Commission initially found reason to believe that Mr Lichfield knowingly and willfully violated 2 U.S.C. § 441f in connection with what appeared to be his use of his own money to pay for the contributions of all ten Lichfields. Because that is not what happened, we do not propose pursuing Mr Lichfield for knowingly and willfully violating the Act.

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1 remaining seven Lichfield contributors, as attributed partners they made contributions, in part, in
2 the names of Stephanie and Tavia Lichfield. However, in light of the comparatively small
3 amount corresponding to each such contributor, and their lesser direct involvement in the
4 RBLFLP contribution, this Office recommends that the Commission take no further action
5 regarding the reason to believe findings that Lenae Lichfield, Loni Lichfield O'Neil, Lyndee
6 Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield and Roger Lichfield violated
7 2 U.S.C. § 441f.¹⁰ Finally, regarding the recipient candidate and Committee, in light of the lack
8 of information indicating any awareness on their part that Stephanie and Tavia Lichfield were
9 not partners of the RBLFLP, and in order to focus the candidate and Committee liability on the
10 more explicit receipt of the excessive contribution from the partnership, we make no
11 recommendation regarding possible section 441f liability here.

12 **ii. Minors**

13 Persons under 18 years of age such as Lenae and Reagan Lichfield may make
14 contributions under certain circumstances. We examine their attributed contributions under the
15 then-applicable Commission regulations that permitted contributions by minors if three
16 conditions were met:

- 17 (i) the decision to contribute is made knowingly and voluntarily by the minor child;
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19 (ii) the funds, goods or services contributed are owned or controlled exclusively by the
20 minor child, such as income earned by the child, the proceeds of a trust for which the
21 child is the beneficiary, or a savings account opened and maintained exclusively in the
22 child's name; and
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24 (iii) the contribution is not made from the proceeds of a gift, the purpose of which was to
25 provide funds to be contributed, or is not in any other way controlled by another
26 individual.

¹⁰ This recommendation also reflects that the investigation has not shown that these seven individuals knowingly permitted their names to be used to effect contributions in the names of another, which was the basis for the Commission's reason to believe findings. See the First GCR at 12-15

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2 11 C.F.R. § 110.1(i)(2)(i) - (iii) (2002).¹¹ If Lenae and Reagan Lichfield's participation as
3 attributed contributors does not satisfy these conditions, their share of the RBLFLP contribution
4 would have to be attributed to the remaining attributed partner-contributors. We address these
5 conditions below.

6 Lenae and Reagan Lichfield have each provided a sworn affidavit in which they aver that
7 they "knowingly and willfully approved the contribution to Mr. Swallow's campaign and that
8 [they] had discussed this with [their] parents."¹² See 11 C.F.R. § 110.1(i)(2)(i). Lenae and
9 Reagan Lichfield each own 13.32% of the RBLFLP, and thus have ownership rights in the
10 partnership's funds, including the funds used to make the partnership contribution. See
11 11 C.F.R. § 110.1(i)(2)(ii). Thus, their attributed contributions were not made from the proceeds
12 of a gift. See 11 C.F.R. § 110.1(i)(2)(iii). It is less clear, however, whether the contributions
13 satisfy the final requirement that they not be "in any other way controlled by another individual,"
14 in light of Robert B. Lichfield's involvement in the partnership distribution and the handling of
15 the contribution checks. *Id.* Any attributed partnership contribution is likely to involve other
16 individuals, especially the general partner of a limited partnership. We need not address the
17 novel and complex issue of whether such involvement by other individuals would in most cases
18 rise to the level of "any" control of the attributed contribution, but we note that here, Lenae and

¹¹ These regulations in amended form now appear at 11 C.F.R. § 110.19. See *Final Rules for Contributions and Donations by Minors*, 70 Fed. Reg. 5565 (February 3, 2005). The new rules do not contain an exclusivity requirement regarding the minor's ownership or control of the funds, goods or services contributed. See 11 C.F.R. § 110.19(b) (2005).

¹² These affidavits, like those from all the Lichfields described above, state that Lenae and Reagan Lichfield each "contributed \$3000 of personal funds" received through a distribution paid from the RBLFLP. Although these affidavits use the phrase "knowingly and willfully," the Commission made no knowing and willful findings regarding Lenae or Reagan Lichfield.

1 Reagan Lichfield had the same level of control over their contributions as did all the other
2 Lichfield contributors aside from Robert B. Lichfield.

3 We also note that the minors' contributions cases where the Commission has entered into
4 conciliation agreements with respondents -- none of which involved partnership contributions --
5 have all involved very young children where the contributions were not made with the children's
6 funds. *See* MURs 5335R (Davis for Congress) (contributions in the names of children ages four
7 and five from funds belonging to parent); 4484 (Bainum) (contributions made in the name of
8 infant son from funds owned and controlled by parents); 3268 (St. Germain) (contributions in the
9 names of children ages four and eight from funds belonging to parent). In the instant matter, the
10 funds belonged to Lenae and Reagan Lichfield as partners, who, at ages 11 and 13, were older
11 than the minors in these other cases. Because the permissibility of the attribution of the RBLFLP
12 contribution to these minors is ambiguous compared to the clearly-excluded non-partners
13 Stephanie and Tavia Lichfield, we do not recommend proceeding with any additional action
14 based on Lenae and Reagan Lichfield's status as minors.

15 **c. Excessive contributions by partners**

16 Of the two attribution rules, 11 C.F.R. § 110.1(e)(1) (pro rata) or 110.1(e)(2) (non pro
17 rata), it appears that the former applies to this situation. Under the Commission's regulations, a
18 partnership contribution is attributed to its partners on a pro rata basis unless the partnership
19 affirmatively selects, by an agreement of the partners, a non pro rata attribution. 11 C.F.R.
20 § 110.1(e). Here, the partners apparently wanted to avoid the dual attribution rules altogether.
21 Because the Lichfields were not trying to make a partnership contribution, viewing the
22 attribution as non pro rata under section 110.1(e)(2) would be imposing such an attribution on
23 the partnership where none was selected.

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Further, section 110.1(e)(2) by its own terms does not apply without advance agreement of the partners, and there was no such agreement here. As noted, Robert B. Lichfield admits that once the checks were drawn, they had to be held until some of the partners ratified his actions.¹³ Although some of the Lichfields' actions were not consistent with a pro rata attribution among themselves – the six-year-old partner was excluded and the contributions “from” the parent-partners exceeded the proportion of their small partnership shares – there was no advance agreement here and so the non pro rata attribution is not available to the Lichfields. For these reasons, we believe the pro rata attribution under section 110.1(e)(1) is the more appropriate course here.

Under the pro rata attribution method, the seven Lichfield daughters and sons each made excessive contributions

Accordingly, we recommend that the Commission take the following actions: 1) take no further action regarding the reason to believe finding that Robert B. Lichfield knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A); 2) dismiss the complaint with respect to the alleged excessive contributions by the other seven attributed RBLFLP partners, Lenae Lichfield, Loni Lichfield O'Neil, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield and Roger Lichfield;¹⁴ and 3) dismiss the complaint with respect to the alleged excessive contributions by Stephanie Lichfield and Tavia Lichfield, who are not attributed contributors in the first place in light of their non-partner status. See the First GCR at 15, fn 18.

¹³ See MUR 5279 (Kushner) (after-the-fact attribution agreements do not satisfy section 110 1(e)(2))

¹⁴ Along these lines, we make no recommendation as to non-respondent Lana Patricia Lichfield regarding her excessive contribution under a section 110.1(e)(1) attribution.

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D. Additional No Further Action Recommendations

In light of the available information showing that Robert B. Lichfield did not purchase the ten \$3,000 contribution checks with his personal funds, this Office now recommends that the Commission take no further action regarding the reason to believe finding that Mr. Lichfield knowingly and willfully violated 2 U.S.C. § 441a(a)(3). See the First GCR at 12-15.

Further, this Office recommends that the Commission take no further action regarding the reason to believe findings that John Swallow for Congress and Stanley R. deWaal, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f, which relate to the Committee's receipt of contributions from WinterFox LLC and WinterHawk Enterprises LLC. See the First GCR at 24-25 and GCR #2 at 8.

V. RECOMMENDATIONS

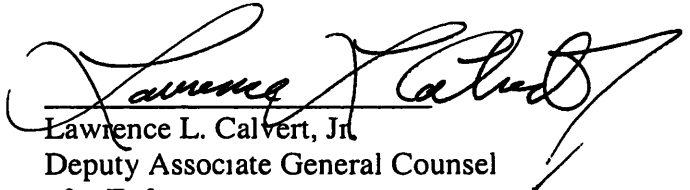
1. Find reason to believe that Robert Browning Lichfield Family Limited Partnership violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f.
2. Find reason to believe that John Swallow violated 2 U.S.C. § 441a(f)

3. Find reason to believe that John Swallow for Congress and Stanley R. deWaal, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b)(3)(A)
4. Take no further action regarding the reason to believe findings that John Swallow for Congress and Stanley R. deWaal, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f
- 5.
6. Take no further action regarding the reason to believe findings that Robert B Lichfield knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3).
- 7.
8. Dismiss the complaint with respect to the alleged excessive contributions by Lenae Lichfield, Loni Lichfield O'Neil, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield.
9. Take no further action regarding the reason to believe findings that Lenae Lichfield, Loni Lichfield O'Neil, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield each violated 2 U.S.C. § 441f.
10. Close the file as to Lenae Lichfield, Loni Lichfield O'Neil, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield
11. Approve the attached Factual and Legal Analyses.
12. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

10/31/05
Date

BY:


Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement

Cynthia E. Tompkins
Cynthia E Tompkins
Assistant General Counsel

Mark Allen
Mark Allen
Attorney

Attachments:

- 1.
- 2.
- 3.
- 4.
5. Factual and Legal Analyses

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